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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDALL JARAMILLO,

Defendant and Appellant.

B207081

(Los Angeles County
Super. Ct. No. BA323568)

APPEAL from a judgment of the Superior Court of Los Angeles County, David Wesley, Judge. Affirmed.

G. Martin Velez, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Randall Jaramillo appeals from the judgment entered following a jury trial which resulted in his conviction of second degree robbery (Pen. Code, § 211)¹ committed for the benefit of, at the direction of, and in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)). The trial court sentenced Jaramillo to 13 years in state prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Facts.

a. The prosecution's case.

At approximately 4:00 p.m. on May 22, 2007, Efren Aguero was standing in front of a liquor store at 2503 North Pasadena Avenue in Lincoln Heights. Aguero had gone to the store with a friend, Jose Alfaro, to purchase a lottery ticket. After buying the ticket, Aguero stepped outside the store. While he was waiting for Alfaro, Aguero saw a small gray car with a male driver and three male passengers pull up and stop just around the corner. Jaramillo, who had been driving, and the three passengers got out of the car. Although Aguero did not know Jaramillo, he had seen him in the area before. Jaramillo and the three men accompanying him all had shaved heads.

Jaramillo and one other man approached Aguero while the other two men acted as look outs. As his companion stood by, Jaramillo told Aguero, “ ‘This is Clover Gang’ ” and to “give him . . . what [he] [(Aguero)] had” or to “give up the stuff.” Aguero believed Jaramillo, who had his right hand in his pants pocket, was carrying a weapon so Aguero gave to Jaramillo his wallet, which contained approximately \$50 in cash, his driver's license, ATM card and other personal items. Jaramillo hit Aguero in the head and face several times with his fists and attempted to take Aguero's cell phone, but was unsuccessful. After again stating that he was from the Clover Gang, Jaramillo told Aguero that he was going to shoot him. Jaramillo then told Aguero to “get out of there.” At that point Jaramillo and his three co-horts got into their car and drove off.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Aguero called the police on his cell phone and reported the incident. When police officers arrived at the liquor store, Aguero was still upset. After he told the officers what had happened, Aguero went to the police station and, after being properly admonished, viewed a set of six photographs. Aguero identified photograph No. 3, or a photograph of Jaramillo, as that of the man who had robbed him. When shown a page with 16 photographs, Aguero identified photograph No. 8, or that of Jaramillo, as that of the man who had taken his wallet. At trial, Aguero again identified Jaramillo as the robber.

On May 22, 2007, Los Angeles Police Officer Anthony Razo and his partner, Officer Lizirraga were on patrol in a marked police car. At approximately 4:00 p.m. that day, Razo and his partner responded to a call reporting a robbery in progress outside a liquor store on Pasadena Avenue in Lincoln Heights. There, they met with Aguero. Aguero was “a little shaky,” “his movements were shaking,” and he told the officers that he had been robbed. After taking Aguero’s statement, the officers drove Aguero around the neighborhood to see if the car and its occupants were still in the area. When they were unable to find the car, Razo and his partner transported Aguero to the police station where they met with other officers, including Officer Huerta. Huerta prepared a “six-pack,” or group of six photographs to be shown to Aguero. After an officer read to Aguero an admonition, he was shown the “six-pack.” When shown the group of photographs, Aguero immediately selected photograph No. 3, or that of Jaramillo, and stated, “ ‘That’s the fool who took my stuff.’ ” Aguero was then shown a page of photographs of individuals in the Clover Street gang. Although he again identified Jaramillo, Aguero could make no other identifications.

Los Angeles Police Officer Rick Huerta had been assigned to the Hollenbeck Station for the previous five years. He was familiar with Jaramillo because he had been assigned to the Hollenbeck Gang Enforcement Detail. The “detail” tracks and monitors gang activity in a certain area. From 2003 to 2005, Huerta had been assigned to, among others, the Clover Gang. During that time, Huerta came into contact with Jaramillo on three or four occasions. Two of the occasions involved formal investigations, while the other two “were just informal contacts.” During one investigation, Huerta was driving

through a neighborhood and he saw “tagging,” or graffiti, signed “Sinner,” which is Jaramillo’s moniker or “street name.” During another investigation, Huerta took photographs of Jaramillo’s tattoos, which included one of a clover leaf on his left hand and the word “ ‘clover’ ” on his left forearm. At the time of Jaramillo’s arrest for the robbery of Aguero, Huerta knew him to be a Clover Gang member. Huerta did not know whether, at the time of trial, Jaramillo was still involved with the Clover Gang.

Los Angeles Police Officer Benjamin Aguilera also works out of the Hollenbeck Division. At the time of trial, he was assigned to the Gang Enforcement Detail. He is a “court qualified expert” for Clover and several other gangs. Aguilera was of the opinion that, at the time he robbed Aguero, Jaramillo was an active member of the Clover gang. Aguilera based his opinion on the fact that at the time of the robbery, Jaramillo told Aguero, “ ‘This is Clover Gang.’ ” Aguilera indicated that by committing the crime, or “putting in work,” in Clover Gang territory, then telling the victim to leave, Jaramillo was promoting or benefitting the Clover Gang and gaining respect for himself both within the Clover as well as with other gangs. According to Aguilera, gang members “live [for] respect.” The commitment of more serious crimes gains more respect for the perpetrator. Robbery is considered a serious crime.

An individual is listed in a computer program called “CALGANGS” if that person is a self-admitted gang member, frequents a gang area, “has associates or affiliates” of a particular gang and has “gang tattoos.” Jaramillo is listed in CALGANGS as a member of the Clover Gang.

b. *Defense evidence.*

Dr. Jose Lopez is an expert on street gangs. A former member of the Tokers Town Gang, Lopez “got in trouble,” spent three and one-half years in prison and four and one-half years on parole. He first attended a local community college, then proceeded to earn a bachelor’s degree in Accounting, a master’s degree in Administration and a doctorate in Political Theory from Claremont Graduate School. Lopez is currently a retired professor emeritus at California State University, Long Beach, and has also taught at the University of California at Riverside and Fullerton College. Lopez has published

six articles and one book, most of which pertain to street gangs. Lopez has qualified as a gang expert in 10 counties, has worked on approximately 50 gang-related cases and testified in approximately 25 of those 50 cases.

Lopez testified that he had known “a lot of people that have left [a] gang” and that the phrase “once a gang member, always a gang member isn’t true[.]” Lopez indicated individuals leave gangs in different ways. Some join a ministry or clergy, some join the military, some simply leave the area.

Lopez was familiar with the Clover Gang and had spoken with Jaramillo about gang membership. With regard to tattoos, Lopez stated it could be difficult to distinguish between a gang member and a non-gang member because tattoos have become acceptable in main stream society. He indicated that a “lot of people have gone into the art of tattoos.”

After reviewing various police reports, the preliminary hearing transcript and discussing the matter with Jaramillo, Lopez concluded “if he was any kind of a gang member, he wasn’t a very important one.” Lopez based his opinion on the lack of sophistication of Jaramillo’s tattoos, that it was apparent that Jaramillo did not use expensive drugs such as methamphetamine, cocaine or heroin and that, although he was unemployed, his significant other was working. Lopez concluded that, at the time of the robbery, Jaramillo was not a gang member.

2. Procedural history.

Following a preliminary hearing, on August 2, 2007 Jaramillo was charged by information with second degree robbery (§ 211), committed “for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.” (§ 186.22, subd. (b)(1)(C).)

Trial began on February 27, 2008. At the close of the People’s case, Jaramillo made a motion for acquittal (§ 1118.1). Following argument by the parties, the motion was denied. At the end of the presentation of evidence, defense counsel renewed his motion for acquittal (§ 1118.1). The motion was again denied.

After being instructed by the trial court, the jury began its deliberations at 4:10 p.m. on Friday, February 29, 2008. On Monday morning, March 3, 2008, juror No. 1 was replaced by the alternate. Accordingly, the jury was instructed that it was to begin its deliberations again. Later that morning, the jury reached a verdict, finding Jaramillo guilty of second degree robbery and finding true the allegation that the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang.

Jaramillo was sentenced on March 27, 2008. After indicating it had read and considered the probation report, the trial court imposed the mid-term of three years for Jaramillo's conviction of second degree robbery. For the finding that the crime was committed in association with and for the benefit of a criminal street gang, the trial court imposed a 10-year enhancement. In total, Jaramillo was sentenced to 13 years in prison. He was given presentence custody credit for 311 days actually served and 46 days of good time/work time, or a total of 357 days. The trial court imposed a \$200 restitution fine (§ 1202.4, subd. (b)), a stayed \$200 parole revocation restitution fine (§ 1202.45), a \$20 court security fee (§ 1465.8, subd. (a)(1)) and a \$10 "theft fine" (§ 1202.5).

Jaramillo filed a notice of appeal on March 27, 2008.

This court appointed counsel to represent Jaramillo on appeal on July 9, 2008.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed November 5, 2008, the clerk of this court advised Jaramillo to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied Jaramillo's counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.